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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION.

Case No. 3:20-cv-09247-SI

Plaintiff.

v.

SILICONSAGE BUILDERS, LLC aka
SILICON SAGE BUILDERS and
SANJEEV ACHARYA.

Defendants.

**NOTICE AND MOTION OF RECEIVER,
DAVID STAPLETON, FOR AN ORDER
AUTHORIZING THE RECEIVER TO
ENTER INTO A SETTLEMENT
AGREEMENT WITH CORTEZ
ENTERPRISES, INC. REGARDING A
DEPOSIT RELATED TO 2055 ALUM
ROCK AVENUE, SAN JOSE, CA**

[Memorandum of Points and Authorities Filed Concurrently]

Hearing:

Date: September 9, 2022

Time: 10:00 a.m.

Crtrm.: 1 – 17th Floor (hearing via Zoom)

Judge: Susan Illston

1 **TO ALL PARTIES IN INTEREST:**

2 **PLEASE TAKE NOTICE** that David Stapleton, the Court-appointed receiver (the
3 "Receiver") over SiliconSage Builders, LLC, and its subsidiaries and affiliates (together,
4 the "Receivership Entities"), is seeking Court approval to enter into a settlement
5 agreement with Cortez Enterprises, Inc., regarding funds held in an escrow related to th
6 agreement of SiliconSage Fund 1, LLC, a Delaware limited liability company (Series) –
7 Series 4 ("SSF1") to purchase real estate located at 2055 Alum Rock Avenue, San Jose,
8 CA 95116 (the "Property"). The Property was intended to be part of the Alum Rock
9 project. Pursuant to the purchase agreement and addendums, SiliconSage tendered
10 deposits totaling \$381,000 into escrow before defaulting under the agreement, although
11 the agreement had not yet been terminated when the Receiver was appointed. When the
12 Receiver was appointed, \$281,000 remained on deposit in escrow.

13 In resolution of the dispute about whether the liquidated damages clause of the
14 agreement constituted an unenforceable penalty, the parties have agreed to divide the
15 funds remaining in escrow, with Cortez receiving \$181,000 of the funds, and the
16 receivership estate receiving \$100,000, less any escrow fees. The settlement agreement
17 is attached to the concurrently-filed Memorandum of Points and Authorities.

18 Unless the Court issues an order in advance of the hearing, the Court will be
19 conducting the hearing by Zoom, and instructions for appearing at the hearing will be
20 posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a), any**
21 **written opposition to the relief sought in this motion must be filed with the Court**
22 **and served on counsel for the moving party by no later than fourteen (14) days**
23 **after the filing of this motion, which is occurring on August 3, 2022.**

24 Concurrently with this motion, the Receiver is filing his Memorandum of Points and
25 Authorities in support of the motion and the supporting declaration of David Stapleton
26 (together, the "Memorandum"). Pursuant to the order limiting notice in this case, both the
27 motion and the Memorandum are available on the website for this receivership, which is

www.siliconsagereceivership.com, or by contacting proposed counsel for the Receiver at kandrassy@swelawfirm.com.

Based on the foregoing and for the reasons set forth in the Memorandum of Points and Authorities, the Receiver seeks entry of an order:

(1) Granting the motion and approving the terms and conditions of the Settlement Agreement;

(2) Authorizing the Receiver to enter into the Settlement Agreement and any documents he deems reasonably necessary to consummate the settlement, including escrow instructions and any cancellation notice; and

(3) Granting such other and further relief as the Court may deem just and proper.

DATED: August 3, 2022

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

By: /s/ Kyra E. Andrassy

KYRA E. ANDRASSY
Counsel for David Stapleton, Receiver

PROOF OF SERVICE

STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On 8/3/2022, I served true copies of the following document(s) described as NOTICE AND MOTION OF RECEIVER, DAVID STAPLETON, FOR AN ORDER AUTHORIZING THE RECEIVER TO ENTER INTO A SETTLEMENT AGREEMENT WITH CORTEZ ENTERPRISES, INC. REGARDING A DEPOSIT RELATED TO 2055 ALUM ROCK AVENUE, SAN JOSE, CA on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)) – Pursuant to United States District Court, Northern District of California, the foregoing document will be served by the court via NEF and hyperlinked to the document. On 8/3/2022, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

(X) (BY U.S. MAIL). I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

() (BY E-MAIL). By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

() (BY FACSIMILE). I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on _____, at Costa Mesa, California.

STATE I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

(X) FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 3, 2022, at Costa Mesa, California.

/s/ Lynnette Garrett
Lynnette Garrett

SERVICE LIST

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